IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PIL WRIT PETITION NO. 2965 OF 2005

Gaurang Dinesh Damani] .. Petitioner

Versus

1. State of Maharashtra & 2 ors.] .. Respondents

Mr. G.D. Damani the petitioner-in-person.

Mr. N.P. Pandit, AGP, for the respondents No.1 & 2.

CORAM: R.M. LODHA &
NARESH H. PATIL, JJ.

DATED: 27TH JULY, 2006

ORAL ORDER : [Per R.M. Lodha, J.]

. We heard Mr. G.D. Damani, the petitioner in person and Mr. Niranjan P. Pandit, Assistant Government Pleader for respondents No.1 and 2.

2. In the light of the averments made in the Writ Petition, the various affidavits filed by the respondents and the rejoinder of the petitioner, the issues that have emerged for consideration by us relate to the towing of vehicles in the city of Mumbai and the arbitrariness in the selection of towing van

contractors.

3. In response to the Writ Petition, four Affidavits were filed by respondents No.1 and 2. These were filed on 25th October, 2005; 2nd March, 2006; 13th April, 2006 and 16th June, 2006. As many issues remained unanswered despite that four Affidavits were filed by respondents No.1 and 2, on 6th July, 2006 the Bench directed the Joint Commissioner of Police (Traffic) to file his Affidavit on the following aspects:

(i) The competence and authority of the Joint Commissioner of Police (Traffic) to engage the contractors for towing service for removal of vehicles which are abandoned or left unattended on any public road in the light of section 127 of the Motor Vehicles Act, 1988, which authorises only police officer having jurisdiction to authorise towing service.

(ii) The mode and manner of selection of contractors for towing service and the terms and conditions on which they are engaged. The list of existing contractors and if they are related to police personnel, the details thereof.

(iii) The details of vehicles towed in the city of Greater Mumbai in the last six months and the amount received towards fine and penalty and details of the complaints received from the vehicle owners regarding the damage caused to their vehicles while towing and the settlement of the claim by the contractors.

(iv) As to whether any order has been

issued to the contractors for opening the closed (locked) vehicles while towing the same and, if not, how the vehicles parked in gear or hand brake are being opened for the purposes of disengaging the gear or hand brake by the towing contractors.

4. The Joint Commissioner of Police (City) (Traffic) has filed his Affidavit on 26th July, 2006 pursuant thereto.

Query (i):

5. The Joint Commissioner of Police has stated that under the Bombay Police Act, 1951 the Commissioner of Police is empowered to make necessary rules and orders to regulate traffic and to direct and regulate all matters of executive details by the Police force under him. The Commissioner of Police, Mumbai, by his order dated 30th April, 2002, empowered the Joint Commissioner of Police to take necessary steps in this regard. According to Joint Commissioner of Police, in accord with the authority conferred by the Commissioner of Police, the services of private towing vans were requisitioned by him and those private towing vans were assigned to various Traffic Police Chowkies.

6. Section 16 of the Bombay Police Act, 1951

provides for general powers of the Commissioner of Police and it reads thus:

> "16. **General Powers of Commissioner and [Superintendent]**
>
> . The Commissioner subject to the orders, of the [Director-General and Inspector-General], and the [Superintendent, subject to the orders of the [Director-General and inspector-General] and the District Magistrate, shall, within their respective spheres of authority direct and regulate all matters of arms, drill, exercise, observation of person and events, mutual relations, distribution of duties, study of laws, orders and modes of proceedings and all matters of executive detail or the fulfilment of their duties by the Police Force under him.

7. Section 67 of the Bombay Police Act, 1951 provides that traffic shall be regulated by the Police in streets. Section 67, to the extent it is relevant for our purpose, reads thus:

> "67. **Police to regulate traffic, etc. in streets.**
> It shall be the duty of a Police Officer -
>
> (a) to regulate and control the traffic in the streets, to prevent obstructions therein and to the best of his ability, to prevent the infraction of any rule or order made under this Act or any other law in force for observance by the public in or near the streets;
>
> (b) .....
>
> (c) .....

8. Section 127 of the Motor Vehicles Act makes provision for removal of motor vehicles abandoned or left unattended on a public place. It makes provision empowering Police Officer to tow away the motor vehicles which are abandoned or left unattended on any public road and recover the cost of removal from the owner of such vehicles. We reproduce Section 127(2) as it is:

> "127(2) Where an abandoned, unattended, wrecked, burnt or partially dismantled vehicle is creating a traffic hazard, because of its position in relation to the [public place], or its physical appearance is causing impediment to the traffic, its immediate removal from the [public place] by towing service may be authorised by a police officer having jurisdiction."

9. From the survey of the aforesaid provisions, it is apparent that the Police Officer has been cast a duty to regulate and control the traffic on the roads and in the streets. If any vehicle abandoned or unattended creates a traffic hazard, Police Officer having jurisdiction may order immediate removal of such vehicle by towing service. The Assistant Government Pleader candidly conceded before us that for the purposes of Section 127, Joint Commissioner of Police is not a Police Officer having jurisdiction. He, however, submitted that the removal of abandoned or unattended

vehicle from a public place by towing service is authorised by a Police Constable (Police Officer) having jurisdiction in the matter. According to the Assistant Government Pleader, Section 127 casts no impediment for the Commissioner of Police or, for that matter, the Joint Commissioner of Police to engage the services of towing vans and then assigning such towing vans at the disposal of the concerned Traffic Chowkie. For the purposes of this Writ Petition, we are of the view that we may assume that Commissioner of Police or, for that matter, Joint Commissioner of Police is competent and empowered to engage the services of towing vans for Mumbai City and then assign it to various Traffic Police Chowkies and further consideration on this aspect is not necessary.

Query (ii):

10. We wanted to know from the Joint Police Commissioner of Police the mode and manner of selection of contractors for towing service and the terms and conditions on which they were engaged. We also asked him to place on record the list of existing contractors and if they are related to police personnel, the details thereof. Though the Affidavit of the Joint Commissioner of Police runs into six pages, we find that the said

Affidavit does not disclose the mode and manner of selection of contractors for towing service. As a matter of fact, the Assistant Government Pleader admitted that there are no guidelines framed nor norms fixed for selection of contractors for towing service. Exhibit-3 that has been annexed with the Affidavit of the Joint Commissioner of Police is revealing. It shows that for the period from January 2006 to June 2006, 171804 vehicles were towed and an amount of Rs.2,61,96,650/- was recovered towards towing charges. It is clear therefrom that large number of vehicles were towed during the period of six months from January 2006 to June 2006 and staggering amount of Rs.2,61,96,650/- was recovered towards towing charges. That the amount of Rs.2,62,96,650/- towards towing charges was recovered by 116 contractors is not in dispute. An inference from this is inevitable that 116 contractors that were selected by the Joint Commissioner of Police without framing any guidelines or norms, have been financially benefitted to an extent of more than Rs.2.5 crores. Obviously, selection of such contractors cannot be left to the whims or arbitrariness. It is all the more astonishing that out of 116 contractors so selected, 16 contractors are related to Police personnel. This surely reflects an element of favouritism and nepotism; what else.

11. In his Affidavit, the Joint Commissioner of Police has informed the Court that now the 16 contractors who are related to Police personnel have been disengaged and out of the remaining 100, presently 59 towing vans stand requisitioned. It is also stated that 75 towing vans are required for the city of Mumbai. Since in our judgment and conclusion the engagement of the existing contractors suffers from serious flaw and without following a reasonable procedure, the services of these existing contractors have to go.

12. The Assistant Government Pleader submitted that until the guidelines and procedure for selection of contractors for towing service are formulated and put in place, and that, in his opinion, is likely to take four months, the existing 59 contractors may be permitted to operate lest it must create lot of traffic problems in the city of Mumbai. According to him, the State Government has only provided ten towing vans which are grossly insufficient for the purpose. We have taken note of this aspect and our operative order shall take care in this regard.

Query (iii):

13. While dealing with Query (ii), we have already referred to the number of vehicles that were towed in the city in the last six months from 1st January 2006 to 30th June 2006 and the huge amount received towards fine and penalty. As regards the complaints received from the vehicle owners regarding the damage caused to their vehicles while towing and the settlement of the claim by the contractors, the Affidavit states that seven vehicles out of 171804 vehicles were got damaged and the matter was settled amicably amongst the vehicle owner and the towing van contractor. The details thereof are provided in Exhibit-4 annexed to the Affidavit. The petitioner, however, submitted that Exhibit-4 does not reflect the true and correct state of affairs as it is inconceivable that only seven vehicles got damaged out of 171804 vehicles towed during the period January 2006 to June 2006. We have no justifiable reason in not believing the statement made in Exhibit-4. However, we clarify that if any vehicle owner has any complaint regarding damage caused to his or her vehicle while towing, such vehicle owner shall be free to make complaint and get the claim settled from the contractor.

Query (iv):

14. The Assistant Government Pleader admitted that

no order has been issued to the contractors for opening the locked vehicles while towing. He, however, submitted that when vehicles are parked in gear or hand brake, for towing the said vehicle, gear or hand brake has to be disengaged by the towing contractor. In our view, the towing contractor cannot take a decision by himself in opening the locked vehicle. The order has to be passed by the Police Officer having jurisdiction who authorises removal of the vehicle by towing service.

15. In conclusion, we would say this: We have assumed for the purpose of this Writ Petition that Commissioner of Police or, for that matter, Joint Commissioner of Police has competence and authority to engage the contractors for towing service; that for want of any guidelines or norms in selection of contractors for towing service, the engagement of 116 contractors for towing service by the Joint Commissioner of Police (City)(Traffic) is unsustainable; that the authorisation, by the Police Officer having jurisdiction, for removal of vehicle by towing service has to be in writing and if such vehicle is closed or locked and parked in gear or hand brake the order in writing shall have to be given by the Police Officer for disengaging the gear or hand brake before removal of the vehicle by the towing contractor.

16. We accordingly dispose of the Writ Petition by the following order:

O R D E R :

(i) The guidelines prescribing the eligibility and the mode and manner of selection of the contractors for towing service shall be finalised by the Joint Commissioner of Police (Traffic) within a period of four months and after expiry of four months, only those contractors (of towing van) selected in accord with these guidelines shall carry out the work of towing in the city of Mumbai.

(ii) For a period of four months from today and not beyond that, the existing 59 private contractors are permitted to operate. In other words, beyond four months from today, the services of the 59 contractors for towing service shall come to an end.

(iii) That the authorisation, by the Police Officer having jurisdiction, for removal of

vehicle by towing service shall be in writing. In case such vehicle is closed or locked and parked in gear or hand brake, the concerned Police Officer shall give a written order for disengaging the gear or hand brake before removal of the vehicle by the towing contractor.

Sd/-
[R.M. LODHA, J.]

Sd/-
[NARESH H. PATIL, J.]